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Situation of human rights in the Democratic Republic of the Congo

Note by the Secretary-General*

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report of the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo, prepared by the Special Rapporteur of the Commission on Human Rights, Professor Iulia Motoc (Romania), pursuant to General Assembly resolution 56/173 and resolution 2002/14 of the Commission on Human Rights.

* Transmitted late in order to include additional information.

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Interim report of the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo

Summary

In Government-controlled territor there has been progress in the protection of human rights. Serious human-rights violations have taken place in rebel-controlled territory, particularly in the east of the country. Sexual violence against women and children has been used as a weapon of war by most of the armed groups involved in the conflict.

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I. Introduction

A. Mandate and activities of the Special Rapporteur

1. In its resolution 2002/14, adopted without a vote on 19 April 2002, the Commission on Human Rights decided to request the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo to submit an interim report to the General Assembly at its fifty-seventh session and to report to the Commission at its fifty-ninth session on the situation of human rights in the Democratic Republic of the Congo and on the possibilities for the international community to assist with local capacity-building, and also to request the Special Rapporteur to continue to keep a gender perspective in mind when seeking and analysing information.

2. The Commission on Human Rights also decided to request to the Secretary-General to give all necessary assistance to the Special Rapporteur to enable her to discharge her mandate fully.

3. The report of the Special Rapporteur is based on the information regularly transmitted to her by the Office of the United Nations High Commissioner for Human Rights in the Democratic Republic of the Congo, representatives of institutions, churches, non-governmental organizations (NGO), political parties and various associations, as well as on the information compiled during her recent exploratory visit. The present report is submitted pursuant to the resolution of the Commission on Human Rights referred to above, and covers information received up until 20 September 2002.

4. Soon after her appointment as Special Rapporteur on 28 November 2001, she went to Geneva on 4 and 5 February 2002 for various consultations: she talked with the Permanent Representative of the Democratic Republic of the Congo to the United Nations Office and other international organizations at Geneva, officials in the Office of the United Nations High Commissioner for Human Rights, members of diplomatic missions and representatives of NGOs.

5. The Special Rapporteur went to the Democratic Republic of the Congo for the first time from 13 to 19 February 2002 (visit to Kinshasa). During her first visit to the country, in the course of which she was not able to go to the East of the country, the Special Rapporteur was received by President Joseph Kabila and some members of the Government, including the Minister for Foreign Affairs and the ministers of justice and human rights. The Special Rapporteur met representatives of institutions, churches, national and international NGOs, political parties and various movements. She also met the representatives of the diplomatic corps (including the Presidency of the European Union), a representative of the Office of the Facilitation of the Inter-Congolese Dialogue, the heads of United Nations system agencies and the staff of the Office of the United Nations High Commissioner for Human Rights in the Democratic Republic of the Congo and the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC).

6. The Special Rapporteur transmitted to the Government 10 requests for urgent action, six to the Government (for a total of 11 people) and four to the Rassemblement congolais pour la démocratie (RCD) (for a total of 25 persons) in all. There has been no response to any of these communications.

B. Joint mission to investigate allegations of massacres

7. In paragraph 6 (b) of its resolution 2002/14, the Commission on Human Rights decided to request the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo and the Special Rapporteur on extrajudicial, summary or arbitrary executions and a member of the Working Group on Enforced or Involuntary Disappearances to carry out, as soon as security conditions permitted and, where appropriate, in cooperation with the National Commission of Inquiry to investigate alleged human rights violations and breaches of international humanitarian law in the Democratic Republic of the Congo (formerly Zaire) between 1996 and 1997, a joint mission to investigate all massacres carried out on the territory of the Democratic Republic of the Congo, including those in the province of South Kivu and other atrocities referred to in the last report on the situation of human rights in the Democratic Republic of the Congo of the previous Special Rapporteur and in his previous reports, with a view to bringing to justice those responsible, and to report to the General Assembly at its fifty-seventh session and to the Commission at its fifty-ninth session. In response to that request, a note by the Secretary-General explaining the preliminary consultations held by the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo is submitted to the General Assembly.

C. Reprisals against persons working for the United Nations and those who have cooperated with it

8. The Special Rapporteur communicates the following information on reprisals against persons working for the United Nations: the case of certain United Nations officials, including Mr. Amos Namanya Ngongi, Special Representative of the Secretary-General, the Chief of the Human Rights Section of MONUC in Kisangani and Mr. Gasparo, United Nations Chief of Security in Goma, expelled by RCD and regarded as persona non grata on the territory of RCD. These officials have been subjected to intimidation and to accusations that are totally without foundation. Assaults were also perpetrated by RCD troops against two MONUC staff members in Kisangani (when informed of this incident, the RCD officials in Goma apologized to MONUC and referred to the sending by RCD of a commission of inquiry to Kisangani). The attitude of RCD/Goma is not conducive to the successful conduct of the peace process in the Democratic Republic of the Congo, particularly as regards the demilitarization of the town of Kisangani.

II. Armed conflicts

A. Conflict between the Government and the Rassemblement congolais pour la démocratie

9. Tension between the Congolese armed forces and the forces of RCD remains high. Fighting between the two armies has continued and cases of defection from the RCD forces have been reported: some units, including the 71st Battalion of RCD/Goma, are said to have defected to join the Congolese Armed Forces (FAC). The dilatory manoeuvres give rise to fears that at any moment hostilities may be resumed by the protagonists: RCD/Goma accuses the Kinshasa Government of supporting the

men of Commander Patrick Masunzu, of having occupied the town of Pweto (Haut Katanga), of reinforcing its forces in Ituri and of having deported members of the ethnic communities from that part of the country. RCD/Goma is threatening military action to retake Pweto locality if it is not evacuated by the pro-Government forces.

10. The massacres of the members of the civilian population (about 500 people) in Ituri on 4 and 5 June 2002 by FAC troops with armed Mai-Mai groups trained and supervised by RCD/Mouvement de libération (RCD/ML), which have been denounced by RCD/Goma, have given rise to fears of a resumption of hostilities by the latter in the territories under its control.

B. Conflicts between the Government and the Mouvement de libération du Congo

11. Until the signature of the Sun City framework agreement in South Africa on 19 April 2002, the Mouvement de libération du Congo (MLC), which is in control of Equateur province and is supported by Uganda, continued to confront the FAC which are supported by Zimbabwe, Angola and Namibia. The alliance between the Government and Mr. Jean-Pierre Bembe's MLC to implement this agreement made a major contribution to the suspension of hostilities, thus enabling a government delegation headed by the Minister of the Interior to visit Kampala and the territories under MLC and RCD/Mouvement Intérieur (RCD/MI) control in May 2002.

C. Ethnic conflict between the Bahema and the Balendu

12. The Ituri region is currently the victim of a number of bloody and murderous clashes between the Bahema and the Balendu. The violence in Ituri is virtually constant: on 15 February 2002 about 100 people were massacred in clashes between the Bahema and the Balendu. The clashes between the two communities in Gonga, on 18 April 2002, claimed a number of victims. In the night of 25-26 April 2002 the Bahema are said to have burned the village of Soleniama, while the Bangiti, the same night, are said to have cut the throats of seven Bavira in reprisal for the villages burned in the night of 14-15 April 2002.

13. The discussions within RCD-Kisangani/Mouvement de liberation (RCD-K/ML), born out of the rivalries between the movement's two main leaders, namely Mr. John Tibasima and Mr. Mbusa Nyamwisi, have contributed to the exacerbation of inter-ethnic conflicts. Some political movements have not hesitated to incite the small groups of their tribes in order to ensure that their political claims prevail. A situation of insurrection reigns in the province, primarily in the Kolomani and Soleniama, localities situated around Bunia, as well as in the Mudzipela district of Bunia.

D. Other conflicts

14. A mosaic of armed groups is operating above all in the east of the country. These armed groups, whether or not "signatories" to the Lusaka Agreement, rule over the civilian population by terror. The succession of armed troop movements and the level of community tensions have reduced the proportion of localities that are regularly accessible. North and south Kivu provinces and whole territories

(Ubuari, Fizi, the periphery of Walikele, Shabundu and Isiro) are regularly out of reach of humanitarian teams because they are located in areas controlled by RCD, RCD/ML or the Front de libération du Congo (FLC), but are held by the armed groups, within which it is difficult to distinguish the Mai-Mai militiamen from the Interahamwe militiamen (ex-soldiers) or young Rwandan and Burundian recruits.

15. On the high plateaux of South Kivu, the Congolese of Rwandan Tutsi origin, who are strongly opposed to their cause (recognition that they belong to the Congolese nation) being assimilated to Kigali's own strategic interests, are committing acts of violence in the provinces, where clashes have been reported between the Mai-Mai and the RCD forces and their Rwandan allies at Manyema (Kindu), Mazizi and Rutshuru (North Kivu) resulting in massive displacements of the population into the forest and claiming victims among the civilian population.

16. Insecurity is very high in the territories controlled by the armed opposition, where violent fighting is taking place among the various armed militias for the control of their movement or the reconquest of territories lost in previous clashes, such as those which took place during June 2002 at Kasongo in Basuka commune (Kindu) at Ahunguli among the forces of RCD/Armée patriotique rwandaise (RCD/APR), the Mai-Mai, the Interahamwe and other armed militias.

E. The ceasefire agreements and their implementation

17. After two years of stalemate, the replacement of President Laurent Désiré Kabila by his son Joseph Kabila made it possible to revive the implementation of the Lusaka Agreement and reopen the prospects for the inter-Congolese dialogue. The more open approach proclaimed by President Kabila has been reflected in the Government's involvement in the implementation of the Lusaka Agreement, respectful of the ceasefire, partial withdrawal of the foreign troops and the deployment of MONUC. This new dynamism enabled the Facilitator of the inter-Congolese dialogue to reactivate the preparations for these meetings, which finally took place in Sun City, South Africa, for 52 days starting on February 2002.

F. Impact of the war

18. The war has continued to make the social and humanitarian situation in the Democratic Republic of the Congo cause for concern. Access to health care has disappeared: hospitals and health centres across the country are dilapidated, and in the east, much of the hospital infrastructure has been destroyed in the fighting.

19. In the east of the country insecurity, poverty and the frequent closure or destruction of schools have lowered the attendance rate. The gloomy political and economic situation has caused a very disturbing rise in unemployment. The deteriorating environment and general housing standards are provoking natural disasters such as erosion, flooding and deforestation. In January 2002 Mount Nyiragongo erupted, destroying 20 to 40 per cent of Goma and leaving many families totally destitute.

20. The war has displaced over 2 million people, most of them in the east of the country. Since the redeployment of troops from the front line to ore-rich areas, the security situation in the east of the Democratic Republic of the Congo has only worsened.

G. Situation of persons considered to be in danger

21. The situation of the vulnerable individuals housed at the Institut national de sécurité sociale (INSS) site at Mont-Ngafula in Kinshasa remains worrying. There were approximately 300, including women and children, by 27 July 2002. The contact group consisting of the Office of the High Commissioner for Human Rights, the International Committee of the Red Cross, the Apostolic Nuncio, the Ministry of Human Rights and representatives of embassies and international bodies suggested that most of those individuals be resettled in the east and west of the country.

III. The inter-Congolese dialogue

22. The outcome of the preparatory meeting held in Gaborone from 20 to 24 August 2001 included a decision to sign a "republican pact" reaffirming the principles of unity, integrity and national sovereignty, inviolability of frontiers and free movement of individuals and goods. Considered a "pre-dialogue" forum, the Gaborone meeting laid the groundwork for the national dialogue which began in Addis Ababa on 15 October 2001.

23. The dialogue took place in Sun City in South Africa, starting on 25 February 2002 and continuing for 52 days. It involved 300 delegates gathered into five blocs representing all the players in the Democratic Republic of the Congo: the Government, all the rebel wings and their splinter groups, all sections of the unarmed political opposition, civil society in the widest sense, and the armed militias.

24. The agenda for the dialogue covered matters which were vital for the rebuilding of the country. Five committees were set up: one for political and institutional matters, one for defence and security, one for economic and financial matters, one for peace and reconciliation and one for social issues. Thirty-seven resolutions were adopted.

25. A revised proposal was under negotiation when the Government and MLC reached a Political Agreement for consensual transition in the Democratic Republic of the Congo, outside the framework of the Dialogue. A large number of political parties and civil society organizations were signatories. RCD, the Union pour la démocratie et le progrès social (UDPS) and some other political movements rejected the Sun City agreement and formed the Alliance pour la sauvegarde du dialogue intercongolais.

26. The international community encourages the Congolese to reach an overall and inclusive agreement as the only means of reviving the peace process in the Democratic Republic of the Congo and the countries of the Great Lakes region. It was with that goal in mind that Mr. Moustapha Niasse, Special Envoy of the Secretary-General of the United Nations for the inter-Congolese dialogue, visited the Democratic Republic of the Congo on 16 June 2002 (the visit was devoted to consultations with the Congolese parties). The negotiations between President Joseph Kabila of the Democratic Republic of the Congo and the President of Rwanda, facilitated by the Secretary-General of the United Nations and the President of the Republic of South Africa, reportedly discussed the establishment of a "buffer zone" to act as a security curtain between Rwanda and the Democratic Republic of the Congo, which would be supervised by the United Nations. The Peace Agreement signed by Mr. Joseph Kabila, President of the Democratic

Republic of the Congo, and Mr. Paul Kagame, President of Rwanda in Pretoria on 30 July 2002 under the auspices of Mr. Thabo Mbeki, President of South Africa, was a significant step forward in restoring peace to the Democratic Republic of the Congo and the Great Lakes region. It provides for a ceasefire with effect from its signature, and also deals with the withdrawal of Rwandan troops from the Democratic Republic of the Congo in exchange for the disarmament and regrouping of the Interahamwe and ex-Forces armées rwandaises (FAR) forces by the Government of the Democratic Republic of the Congo. A separate agreement was signed between the Democratic Republic of the Congo and Uganda on 15 August 2002. That agreement, the Luanda Agreement, covered the withdrawal of Ugandan troops from the Democratic Republic of the Congo, the resumption of bilateral cooperation and the restoration of diplomatic relations between the two countries.

IV. Political development and democratization

A. In Government-controlled territory

27. The country continues to be ruled through a constitutional decree-law imposed by the Alliance des forces démocratiques pour la libération du Congo.

28. The framework agreement, which logically should have led to the drafting of a transitional constitutional charter and the drawing up of a timetable of consultations aimed at forming a government, failed to do so. The power-sharing arrangements for the transitional period were set out in article 1 of the Political Agreement for consensual transition in the Democratic Republic of the Congo: Mr. Joseph Kabila remained President, Mr. Jean-Pierre Bemba was made Prime Minister, the speaker of the National Assembly would come from the Rassemblement congolais pour la démocratie and the speaker of the Senate would come from the unarmed opposition.

29. According to article 2 of the framework agreement, the transitional institutions are the President, the National Assembly, the Senate, the Government and the courts and tribunals, plus the citizens' institutions listed in article 1: the Independent Electoral Commission, the High Authority for the Media, the Truth and Reconciliation Commission, the Congolese Human Rights Monitoring Centre, the Ethics Commission and the Anti-Corruption Commission. A working group was established to draft a transitional constitutional charter.

30. The work of the drafting of the transitional constitution was not successful because of the continuing disagreement between the delegates of the Government and those of the MLC on issues including the representation quota, the prerogatives of the Head of State and Prime Minister and the command of the armed forces.

31. The Special Rapporteur welcomes the lifting (on 17 May 2002) of the three-year suspension affecting the activities of political parties and non-profit associations. The lifting of the suspension was violated by the restriction of certain civil liberties, including peaceful protest marches by activists of the Union pour la démocratie et le progrès social (UDPS) on 9, 11 and 12 April 2002. Three UDPS members from Kasai Oriental (Mr. Jean-Paul Mbewebwa, Mr. Bernard Nyandu and Mr. Maurice Bamaniyi) had been arrested on 19 April 2002 for having backed the candidacy of Etienne Tshisekedi. They are still being held in Mbuyi-Mayi central prison.

32. Since UDPS joined the ranks of non-signatories of the Sun City Agreement, its supporters have been the victims of violent acts ranging from extortion to imprisonment and/or arbitrary detention and ill-treatment. On 4 June 2002, officers of the national police violently broke up a peaceful march organized by UDPS activists to support the continuation of inter-Congolese negotiations for an overall and inclusive political agreement. Some of the activists arrested and detained in the punishment cells (*cachots*) of the Kinshasa provincial inspectorate of police were mistreated. The same happened to six other UDPS activists commonly called the *parlementaires debout*, who were arrested by the police on 28 June 2002 and taken to *Bureau 2* of the *Palais de marbre* (presidential palace), where they were reportedly mistreated and put in detention.

33. There is no parliament with members elected according to democratic rules, only the structure set up by the late President Laurent Désiré Kabila which serves as a transitional parliament. The members of the transitional parliament are appointed by the executive, which can also dismiss them at any time.

B. In territory controlled by the Rassemblement congolais pour la démocratie (RCD) and the Mouvement de libération du Congo (MLC)

34. Because of the widespread danger and violations of human rights, the democratic process is a difficult issue to discuss. The Front de libération du Congo (FLC) had been formed during the course of a number of meetings between the leaderships of the RCD/Goma and MLC rebel movements, held in Kyakwanza, Gbadolite, Goma and Addis Ababa. RCD/ML, RCD/National and MLC had formerly been part of FLC, which consisted of all the rebel groups backed by Uganda, and were fighting in the Equateur and Orientale provinces. One of the rebel factions, RCD/ML, later moved closer to the Kinshasa Government.

35. During the inter-Congolese dialogue, new coalitions encompassing the unarmed opposition and civil society were established. One such coalition emerged from the signing of a framework agreement between MLC and the Kinshasa Government. The parties which did not sign the framework agreement met in Pretoria and established a platform, the Alliance for the preservation of the inter-Congolese dialogue, which included UDPS and RCD/Goma. The aims of the Alliance included continuation of the Inter-Congolese Dialogue, the establishment of a new, consensual political order, and the defence of the letter and spirit of the Lusaka Agreement.

V. Human rights situation

A. In Government-controlled territory

36. *Right to life.* The Special Rapporteur welcomes the progress made; President Kabila has ordered a moratorium on the death penalty and article 18 of the Congolese Charter of Human Rights prohibits death sentences. Unfortunately, the Charter's legal status remains unclear. At the same time, the Special Rapporteur has received several reports of violations of the right to life: on the night of 24 June 2002, 3 boys, Tshibanda Dodo, Kazadi Muenda and Ngeleka Papy, aged 16, 15 and 17 respectively

and residing in the commune of Bipemba (Mbuyi-Mayi), were shot by police officers guarding the area controlled by the Société minière de Bakwanga (MIBA).

37. *Right to physical and mental integrity.* Allegations of violation of the right to physical integrity have been transmitted to the Special Rapporteur. On 26 October 2001, Commander Memina, national service chief, reportedly raped an eight-year-old girl, Anto Kakogui.

38. *Right to liberty of person.* The Special Rapporteur has been informed of cases of violation of the right to liberty of person: members of the Alliance des Bakongo (Bakongo Alliance) Board of Directors were arrested and detained in the national police special services punishment cells (*cachots*) because they had sent an official letter to the President of the Republic and Mr. Sii Luanda, Chairman of the Committee of Human Rights Observers (CODHO), was arrested on 19 April 2002 for harbouring Mr. Michel Bisimwa, who was accused of criminal association and treason.

39. *Right to due process.* The administration of justice remains a serious problem to be resolved by the authorities of the Democratic Republic of the Congo. National legislation, including presidential decrees, is often ineffective and the independence and impartiality of the judiciary are non-existent. Offences committed by civilians (such as conflicts over land and threats to State security) are still brought before the Military Court. The trial of President Kabila's assassins demonstrates the weakness of the judiciary. At the 15 March 2002 hearing, the testimony of 95 out of 135 defendants was taken; only five of the defendants had lawyers. The defendants have been given no access to a lawyer during the year in which they have been held in detention; this constitutes a violation of the right to a defence. The offences with which they are charged are capital crimes. The Military Court is a special tribunal responsible for prosecuting the presumed assassins of the late President Kabila; it is a court of first and last instance (art. 5). The right of all defendants to appeal to a higher court is not respected. Despite the presidential decree calling for the closure of all places of detention except those under the Public Prosecutor's Office, some of them are still in operation.

40. *Right to security of person.* The Special Rapporteur receives many complaints of violation of the right to security of person; such violations are made possible by the impunity enjoyed by members of the armed forces and the police and, in some cases, by administrative officials. Individuals are arbitrarily arrested and detained for 24 hours even after showing their identity papers, and soldiers and police officers assault members of the general public, demanding money and property.

41. *Right to freedom of expression.* The Special Rapporteur has received reports of the illegal detention of journalists working for various private media companies; Mr. José Feruzi, a journalist with Channel 2 of the National Radio and Television Corporation, was arrested by soldiers on 3 April 2002, savagely beaten and held for 10 days in the Detection of Unpatriotic Activities Police (DEMIAP) punishment cells (*cachots*).

42. *Right to freedom of association and assembly.* The Special Rapporteur notes that there has been some improvement in the situation as a result of the presidential decree on political parties. However, NGOs and political parties which have chosen to report human rights violations, make public speeches and defend the rights of their fellow citizens against the arbitrary nature of the authorities and their various security services are sometimes subjected to harassment. Some human rights NGOs

are harassed and their members arrested and detained; the organizations most affected are the Association africaine de défense des droits de l'homme (ASADHO), CODHO and the Observatoire congolais des droits de l'homme (OCDH).

43. *Economic, social and cultural rights.* The economic and social situation remains a source of concern owing to the lack of public spending in the social sector; insufficient tax revenues, which reduce the poorest sectors' access to health, education and drinking water services; incessant, uncontrolled population movements as a result of the war; and a very disturbing increase in the unemployment rate.

44. *Right to health.* The health infrastructures are totally lacking in equipment and pharmaceutical products.

45. *Right to education.* The war has had an impact on the educational system, which was in decline; the enrolment rate has fallen from 94 per cent in 1978 to approximately 80 per cent in 2002, and the literacy rate is very low.

46. *Right to housing.* High rents and extremely dilapidated housing make it impossible for many families to find decent homes.

47. *Situation of women and children.* Gender inequality is enshrined in the Civil Code. Article 352 of the Family Code sets the minimum age of marriage at 18 for men and 15 for women, while article 457 makes a distinction according to whether adultery is committed by a woman or a man. Women account for over half the people displaced as a result of the war; their living conditions are clearly extremely precarious.

48. The Special Rapporteur welcomes President Kabila's measures for the demobilization of 300 child soldiers; however, it is still very important for these children to be reintegrated into society. Widespread poverty has led to family break-ups and made it impossible for parents to care for their children. Children have suffered incalculable trauma as a result of the atrocities and violence to which they have been subjected; for some of them, the psychological damage will be lifelong. Many children suffer from diseases such as measles, malnutrition and acute pulmonary infection as a result of the war.

B. In territory controlled by the Rassemblement congolais pour la démocratie (RCD) and the Mouvement de Libération du Congo (MLC)

In territory controlled by RCD

49. *Right to life.* There are widespread violations of the right to life in RCD-controlled territory; 17 military prisoners with heavy sentences were dragged from their cells and four of them were summarily executed inside the prison on orders from Commander Ayou Boni, RCD chief of intelligence and military security. The most striking case was that of the massacre of several people in Kisangani by members of the Rwandan Patriotic Army (APR) on 14 and 15 May 2002 — which, incidentally, was the subject of a fact-finding mission on extrajudicial, summary and arbitrary executions which the Special Rapporteur made. On the basis of the information gathered, the Special Rapporteur believes that extrajudicial and summary executions have been committed in the municipality of Mangobo, at the Bangboba airport, in the Ketalé military camp, at the Tshopo Bridge and in the 7th Army Brigade detention centre. She also notes the serious abuses committed by

RCD/Goma officials and the possibility of further reprisals which may lead to an escalation of violence and spread to other provinces of the Democratic Republic of the Congo. The confrontations between the Balendu and the Bahema in Bunia on 6-10 August 2002 are said to have left over 85 dead and several wounded, most of them women and children. A common grave containing 38 bodies was allegedly found at an unidentified location, and 115 bodies were reportedly discovered in the town of Bunia and surrounding areas on 12 August 2002. The same sources state that 10,000 families have been displaced in the town of Bunia.

50. *Right to physical and psychological integrity.* During the period under review, the Special Rapporteur received reports of violations of the right to physical and psychological integrity. Cases were reported involving the rape of women and children, abductions, illegal detentions and inhuman and degrading treatment, mostly at the hands of the security forces and armed groups. On 9 August 2002, Mr. Georges Mukendi, a diamond trader, was arrested by the security services and detained on charges of debt in the Directorate-general for Internal Security punishment cell (*cachot*). Seven persons charged with violating State security and collaborating with the enemy were arrested on 11 July 2002 and detained in Uvira main prison.

51. *Right to liberty of person.* Any person expressing an opinion opposed to that of RCD or MLC or participating in an unauthorized meeting is systematically arrested and incarcerated, as in the case of Mr. Firmin Yangambi, deprived of his freedom of movement since 28 January 2002, when he was returning from a consultation with national civil society in Kinshasa and a meeting with the unarmed opposition in Belgium.

52. *Right to a fair trial.* The situation of judges is human and material: their number is very limited, resulting in a heavy workload; they also lack the basic materials needed for their work (typewriter, paper, pens, etc.). Their salaries are paid on an irregular basis.

53. Most detainees never stand trial and remain incarcerated in police stations or penitentiaries for months. The most serious violations of the right to due process arise from the impunity enjoyed by the perpetrators of massacres, assassinations and torture, usually the security forces and armed groups. The most striking case involved 17 soldiers detained in Kalémie main prison and given heavy sentences. They launched an appeal after being convicted by a special court. Four of their number were summarily executed inside the prison walls and buried in a communal grave behind the prison. Their bodies were disinterred the night of 18/19 May 2002 and taken to an unknown destination. As for the 13 military detainees, the place of their imprisonment and their ultimate fate are unknown. The persons responsible were never brought to justice.

54. A visit made by the Office of the United Nations High Commissioner for Human Rights in the Democratic Republic of the Congo to the *cachot* in Ndosho (Goma) revealed that detainees were often kept in police custody for three weeks. The period of custody is not respected. No custody file is opened for the detainees, and the latter do not even receive a notification of arrest. (The keeping of a custody register is either not respected or simply ignored.) Several detainees maintained that their next of kin had not been informed of their arrest and detention. Only one registration book exists. Prison guards have no notion of criminal procedure and are for the most part illiterate.

55. *Right to security of person.* The Special Rapporteur receives many complaints of violation of the right to security of person. Arrests, beatings of individuals to extort money, interrogations and intimidation of citizens are but some of the tools being used to create a certain fear of security officers. On 5 June 2002, Mr. Assoumba was called in for questioning by a police officer. Brought before the Rapid Intervention Police, he was made to pay 500 Congolese francs to make a money transfer. Ms. Riziki Lubungo, a shopkeeper residing in the Himbi district (Goma) was reportedly arrested on the night of 21/22 June 2002 by armed men. She is accused of involvement in the murder of Mr. Pierre Ruyange. Instances of police harassment were also reported at Mwesso in the Masisi territory.

56. *Freedom of association and assembly.* All public demonstrations, brainstorming days and public activities by associations are prohibited in territory under the control of RCD/Goma. Any associations that do not respect these prohibition measures are violently repressed.

57. *Freedom of conscience and religion.* Throughout the year, churches in the territory have been continuously persecuted. On 12 April 2002, troops of the APR and RCD/Goma surrounded all places of worship in Bukavu, preventing the faithful of the large parish Cahi from entering the church, and forcibly expelling all those who had managed to enter. A similar situation had occurred in the church at Kadutu. At Bunia, several persons belonging to the Hema ethnic group seized the great seminary and bishop's palace to prevent an investiture Mass for the new bishop (of the Nande ethnic group) for Bunia diocese, appointed to replace Bishop Léonard Dhedju (of the Hema ethnic group).

58. *Freedom of expression and opinion.* Freedom of expression and opinion is non-existent. Journalists are threatened, arrested and have their homes forcibly entered. Leaders of non-governmental human rights organizations are exposed to threats, harassment and intimidation on the part of RCD/Goma troops and security forces. On 6 June 2002, the home of Mr. Chabani Sadala, journalist and editor of *La Petite Opinion*, was forcibly entered. Mr. Blaise Baise, President of Pax Christi and coordinator of the network of provincial human rights NGOs was reportedly threatened by the RCD/Goma authorities.

59. *Economic, social and cultural rights.* The Mount Nyiragongo eruption on 17 January 2002 worsened the socio-economic situation. Other exacerbating factors include the non-payment of salaries and/or low salaries in the public sector, the fragility of the security situation and the de facto partitioning of the country. However, the majority of the population survives thanks to the informal sector and trade with inhabitants of neighbouring towns. Moreover, the reopening to traffic of the River Congo and the restoration of certain railway lines should gradually contribute to an improved socio-economic situation.

In territory controlled by MLC

60. There is little information available on violations of human rights in territory controlled by MLC.

61. *The right to life.* Reports of violations of the right to life have been received by the Special Rapporteur.

62. *Right to physical and psychological integrity.* Several cases of violations of the right to physical and psychological integrity have been communicated to the Special

Rapporteur. Mr. Mbomi-Enzimi, a shopkeeper, had an interview with the Public Prosecutor on 19 June 2002; he was taken to the *cachot*, beaten up and tortured. On the order of the chief of the town of Businga, 30 war-displaced persons from the Wanzi I site were arrested on 12 July 2002 and taken to a *cachot*.

63. *Right to due process.* The judicial system suffers from a lack of human and material resources. Some cases cannot be examined owing to a lack of judges, especially criminal cases, which require the presence of three magistrates.

64. *Right to security of person.* In early February 2002, MLC authorities arrested a young woman called Aziza Sonza Mobongo. She was accused of being a spy for the Congolese Armed Forces and taken to Basankusu for questioning. This situation explains the climate of suspicion and intimidation in areas under rebel control. The case was also raised of Mr. Salomon Ilomba who was threatened by the chief of police.

C. Situation of vulnerable groups

65. The situation of women and children is continually worsening owing to the ongoing conflicts and the climate of terror that the rebel groups cause to reign in the territory. Women and children are often used as human shields during attack. Cases of enforced disappearances of women are constantly on the increase. Abducted women are often victims of rape; they are subjected to the worst atrocities (see also chapter VII on gender-specific human rights violations).

66. Pygmies' rights are not respected. Often viewed as an animal sub-species, pygmies are subjected to very difficult living conditions. Hated and excluded by most of the Congolese population, pygmies often have no access to social infrastructure such as health-care centres and schools. In addition, pygmies live in highly precarious shelters that expose them to all kinds of weather. Pygmies have great difficulty gaining access to land and exercising their inalienable rights as an indigenous people. They are pushed ever deeper into the forest and live on unproductive and infertile lands. The State has failed to implement any coherent programme to support the economic infrastructure and traditional ways of the Pygmies.

VI. Violations of international humanitarian law

A. Violations attributable to the Government

67. The Government is responsible for the excesses of the Mai-Mai and the Interahamwe, because of the support it gives to these groups. The Mai-Mai and Interahamwe engage in violence against members of the civilian population whom they suspect of collaborating with the enemy. These excesses lead to many casualties. The promise made by President Joseph Kabila, during the visit of the Security Council, that Government support for the Mai-Mai would be halted must be welcomed.

B. Violations attributable to the forces of RCD, RCD/ML, MLC and the foreign armies allied to them

68. Information given to the Special Rapporteur shows that many attacks have targeted the civilian population. Clashes between the forces of RCD/ML and RCD/National on 15 April in the Ganza area (Ituri) are said to have left 250 people dead and many wounded. There are also reports of summary executions carried out by soldiers of RCD and APR on 17 May 2002 in Kalemie, where they executed 4 of the 17 military detainees serving heavy sentences whom they had taken out of prison. Three people were executed in Birere (Goma) by men in uniform on 24 May 2002. Confrontations between the Bahema and the Ugandan forces of the Ugandan People's Defence Force (UPDF) in the Ituri region are said to have led to the killing of 500 people from the Bahema ethnic group.

69. Mention must also be made of what is believed to have been a mutiny in RCD/Goma in Kisangani (Eastern Province) on 14, 15 and 16 May 2001, which resulted in excesses and the massacring of 50 to 200 members of the civilian population, according to concordant sources.

70. In a report handed to the Security Council delegation, the Réseau d'organisations des droits humains et d'education civique d'inspiration chrétinne in the Democratic Republic of the Congo stated that between 10 February and 26 April 2002, 521 assassinations, 118 rapes, several kidnappings, a number of cases of destruction of property and the burning and pillaging of several villages were recorded in the territories under the control of RCD/Goma and Rwanda.

VII. Gender-specific human rights violations

71. Violence against women is being exacerbated by armed conflict within the Democratic Republic of the Congo. The massive violations of women's rights stem from the sexual violence used during the ongoing armed conflict within the country. Sexual violence has been employed as a war weapon by most of the forces taking part in the conflict. RCD fighters, Rwandan soldiers and members of the opposing forces (Mai-Mai, armed groups of Rwandan Hutu, as well as Burundian rebels from the Forces de défense de la démocratie (FDD) and the Forces nationales pour la libération (FNL)) have frequently and sometimes systematically raped women and girls during the last year. A significant number of women and girls became pregnant as a result of being raped and an unknown number of them have been infected with HIV. Human Rights Watch has termed this sexual violence against women during the armed conflict "a war within a war".

72. Despite the incorporation of the principle of sexual equality in various texts governing the country and the ratification of international agreements and treaties on the advancement of women, several legal provisions still contain passages which discriminate against women (see para. 47).

73. Women work chiefly in the informal sector. They have virtually no access to factors of production like land, credit or technical and vocational training. In towns a growing number of households are headed by women because the country's economy has collapsed. In the countryside, despite the scarcity of resources, low incomes and the lack of access to certain services, agricultural activities enable women to survive.

74. Although education is legally provided for under Framework Law No. 86-005 of 22 September 1986 on national education, boys and girls have far from equal access to education. The percentage of girls in full-time education is lower than that of boys, especially in the countryside. Inequality between the sexes is such that, in 1994/1995, in towns the difference in rates of attendance at primary level ranged from 2 to 10 per cent, while in rural areas the disparity increased to 30 to 60 per cent.

75. Several factors influence women's state of health, especially inadequate income, the high cost of care, poverty, insufficient information about, availability of and access to family planning methods, sexually transmissible diseases, the AIDS pandemic, the absence of health infrastructures and safe drinking water, particularly in rural areas, violence against women and the impact of armed conflict. Women and children are the section of the civilian population worst affected by the consequences of armed conflict and ethnic wars.

VIII. Conclusions and recommendations

A. Conclusions

76. **The massive violations of human rights that are still continuing in the territory of the Democratic Republic of the Congo, especially in the areas controlled by the rebels of RCD/Goma and MLC, are due to the protracted armed conflicts. As in the case of other prolonged armed conflicts, the underlying causes of this war are certainly economic.**

77. **The Special Rapporteur hails the Agreements signed at Sun City, which should lead to the restoration of peace in the country and the establishment of a democratic regime. She likewise welcomes the Agreement signed between Rwanda and the Democratic Republic of the Congo. It must, however, be noted that, after years of war, the implementation of these agreements seems to be a very difficult issue for all the parties concerned. It is pointless to think about the democratization process until the war stops.**

78. **In Government-controlled territory, there has been some progress in the protection of human rights in the form of measures linked to the moratorium on the death penalty, the freeing of 300 child soldiers and the lifting of restrictions on the activities of political parties. Nevertheless human rights violations are continuing, above all in the field of the administration of justice. The Military Court is still in operation and is still trying civilians. Its statute contains provisions incompatible with human rights. The weakness of the judicial system is affecting the entrenchment of all human rights.**

79. **Massive human rights violations are occurring in the territories controlled by the rebels, especially in the east of the country. The extrajudicial executions carried out by RCD/Goma are responsible for the continuing climate of terror. The failure to respect human rights is widespread. No human, civil, political, economic or social rights re observed. Incitement to ethnic hatred is helping to fuel armed conflicts accompanied by violations of humanitarian rights. The sexual violence against women and children is particularly worrying. The reprisals against the civilian population constitute serious infringements of humanitarian law.**

B. Recommendations

80. **All the parties to the conflict must pursue the Inter-Congolese Dialogue and must apply the provisions of the agreements which have been signed. While stressing that the chief responsibility for this process lies with the Congolese, there must also be full cooperation with Mr. Mustapha Niasse, Special Envoy of the Secretary-General for the inter-Congolese dialogue. At the same time, the parties must give their support to the international organizations present on the ground, particularly MONUC during the demobilization, disarmament, repatriation, resettlement and reintegration process. Incitement to ethnic hatred must cease. The norms of humanitarian law must be applied by all the parties to the conflict. Reprisals against the civilian population must stop. All child soldiers must be demobilized and reintegrated in society. The situation of women and children must be improved. The use of sexual violence as a war weapon must be completely abandoned.**

81. **The Government must abide by the commitment given by President Kabila during the Security Council mission that no backing would be provided for the Mai-Mai. Cooperation with the International Tribunal for Rwanda must be maintained. Vigorous steps must be taken to improve the administration of justice. The Military Court must stop trying civilians. The independence and impartiality of the courts is fundamental to real respect for human rights. The Government must put into effect the agreements reached at the National Conference on Human Rights. The provisions of the Civil Code and of other laws which establish a status for women lower to that of men must be amended. Women's participation in public life must be enhanced.**

82. **The Democratic Republic of the Congo and RCD/Goma, as de facto authorities, must respect the sovereignty of the Democratic Republic of the Congo, including its sovereignty over natural resources, and must end extrajudicial executions and all other measures which nourish a climate of terror. Reprisals against members of the United Nations mission, especially MONUC, must cease. An end must be put to the massive violations of human rights and to incitement to ethnic hatred. The civilian population of Sud-Kivu and the high plateaux must be protected.**

83. **The Democratic Republic of the Congo and MLC, as de facto authorities, must respect the sovereignty of the Democratic Republic of the Congo, halt the human rights violations and secure better protection of vulnerable groups.**